

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

ALMONDNET, INC, )  
                        )  
Plaintiff,           ) **JURY TRIAL DEMANDED**  
                        )  
vs.                   ) **CASE NO. 10-CV-298**  
MICROSOFT CORPORATION, )  
                        )  
Defendant.           ) )

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff AlmondNet, Inc. (“AlmondNet”), for its Complaint against Defendant Microsoft Corporation (“Microsoft”), hereby demands a jury trial and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action for infringement by Microsoft of United States Patents Nos. 6,973,436 (“the ‘436 patent”), 7,072,853 (“the ‘853 patent”), 7,454,364 (“the ‘364 patent”), and 7,822,637 (“the ‘637 patent”) (collectively, “the AlmondNet patents-in-suit”), arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

**PARTIES**

2. Plaintiff AlmondNet is a corporation organized and existing under the laws of the state of Delaware, having its principal place of business at 134 Spring Street, Suite 302, New York, New York 10012.

3. Defendant Microsoft is a corporation organized and existing under the laws of the state of Washington, having its principal place of business at One Microsoft Way, Redmond, Washington 98052.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States.

5. This Court has personal jurisdiction over Microsoft because Microsoft has established minimum contacts with this forum and the exercise of jurisdiction over Microsoft would not offend traditional notions of fair play and substantial justice, as Microsoft commits acts of patent infringement in Wisconsin, does business in Wisconsin, and solicits customers in Wisconsin.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b-c) and 1400(b) because Microsoft is subject to personal jurisdiction in this District, commits acts of infringement in this District, and does business in this District.

## **FACTUAL BACKGROUND**

7. Founded in 1998, AlmondNet specializes in media and Internet advertising software and solutions. AlmondNet's platform of innovative advertising technology, including the inventions described in the AlmondNet patents-in-suit, helped revolutionize display and search advertising and increase the efficiency of the Internet advertising market. AlmondNet's patented technology is part of targeted advertising solutions (including its Post-Search™ solutions) that are offered internationally to both advertisers and content publishers.

8. AlmondNet holds all right, title and interest in the '436 patent, entitled "Method for Transacting an Advertisement Transfer," which was duly and legally issued on December 6, 2005 in the name of Roy Shkedi. A true and correct copy of the '436 patent is attached hereto as Exhibit A.

9. AlmondNet holds all right, title and interest in the '853 patent, entitled "Method for Transacting an Advertisement Transfer," which was duly and legally issued on July 4, 2006

in the name of Roy Shkedi. A true and correct copy of the '853 patent is attached hereto as Exhibit B.

10. AlmondNet holds all right, title and interest in the '364 patent, entitled "Method for Transacting an Advertisement Transfer," which was duly and legally issued on November 18, 2008 in the name of Roy Shkedi. A true and correct copy of the '364 patent is attached hereto as Exhibit C.

11. AlmondNet holds all right, title and interest in the '637 patent, entitled "Method for Transacting an Advertisement Transfer," which was duly and legally issued on October 26, 2010 in the name of Roy Shkedi. A true and correct copy of the '637 patent is attached hereto as Exhibit D.

12. Microsoft is a world-wide provider of various software and Internet-based products and services, including online advertising services. Included in Microsoft's Online Services Division is Microsoft Advertising, which provides an advertising platform for website publishers and advertisers. Microsoft Advertising offers advertising services including search-and content-based advertising in connection with Microsoft's Bing™ search engine and Microsoft's content network and affiliated websites, and across multiple platforms including personal computers, mobile devices, and game consoles.

13. Microsoft facilitates its advertising services to advertisers through the Microsoft adCenter, available at <http://adcenter.microsoft.com>. Microsoft adCenter allows advertisers to define bids to present advertisements to visitors of Microsoft's Bing search engine and/or websites affiliated with Microsoft's content network. Using Microsoft adCenter, advertisers can define bids using various bid structures and in relation to desired attributes associated with those visitors, including search activity, demographic information, and online behavior. Microsoft's

advertising platform utilizes these bids to determine the advertisements presented to visitors based on the visitors' attributes.

14. On January 20, 2005, Roy Shkedi and Michael Benedek of AlmondNet met with Joe Doran, Jen Dorre and Eric Hadley of Microsoft to introduce AlmondNet's Post-Search technology and discuss the possibility of AlmondNet and Microsoft working together. At this meeting, AlmondNet informed Microsoft it held two patents on its technology and had additional patents pending.

15. Following up on that meeting at Eric Hadley's recommendation, Michael Benedek of AlmondNet contacted Gary Bembridge, head of Sales for Microsoft in New York, NY, in March 2005 to further discuss opportunities for AlmondNet and Microsoft to work together.

16. In July 2005, Roy Shkedi of AlmondNet and Joe Doran of Microsoft corresponded via email to discuss AlmondNet's Post-Search™ solutions and intellectual property.

17. In early December 2005, after the '436 patent issued, AlmondNet's counsel Eran Zur contacted Kenneth Lustig at Microsoft to discuss AlmondNet's intellectual property and the possibility of Microsoft licensing that technology. These discussions continued into early 2006.

18. On March 2, 2006, Roy Shkedi and Michael Benedek of AlmondNet, accompanied by their patent attorneys Louis Hoffman and Eran Zur, met with David Lubitz, Leonard Smith, Tracey Burnes, Kenneth Lustig and Eric Rosenkrantz of Microsoft to discuss the potential for cooperation between the parties, including the possibility of Microsoft taking a license to AlmondNet's intellectual property.

19. Microsoft never took a license to any of AlmondNet's intellectual property,

including the ‘436, ‘853, ‘364 and ‘637 patents.

20. Microsoft infringes the AlmondNet patents-in-suit directly, contributorily and/or by active inducement, by marketing, selling, offering to sell, providing, instructing, supplying, operating, licensing and/or supporting both the search and content advertising services offered through Microsoft adCenter and the other Microsoft Advertising services (“the Accused Systems and Services”), which practice one or more claims of the AlmondNet patents-in-suit.

**COUNT I**  
**(Microsoft’s Infringement of U.S. Patent No. 6,973,436)**

21. AlmondNet realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 20.

22. Microsoft has been and is directly infringing, actively inducing others to infringe, and/or contributing to the infringement of claims 1, 3, 6, 8 and 15 of the ‘436 patent in this District and elsewhere by marketing, selling, offering to sell, providing, instructing, supplying, operating, licensing and/or supporting the Accused Systems and Services.

23. On information and belief, Microsoft’s infringement of the ‘436 patent was, and continues to be, willful.

24. AlmondNet has been damaged by Microsoft’s infringement of the ‘436 patent and will suffer irreparable injury unless the infringement is enjoined by this court.

**COUNT II**  
**(Microsoft’s Infringement of U.S. Patent No. 7,072,853)**

25. AlmondNet realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 20.

26. Microsoft has been and is directly infringing, actively inducing others to infringe, and/or contributing to the infringement of claims 1, 4, 6, 8, and 15 of the ‘853 patent in this District and elsewhere by marketing, selling, offering to sell, providing, instructing, supplying,

operating, licensing and/or supporting the Accused Systems and Services.

27. On information and belief, Microsoft's infringement of the '853 patent was, and continues to be, willful.

28. AlmondNet has been damaged by Microsoft's infringement of the '853 patent and will suffer irreparable injury unless the infringement is enjoined by this court.

**COUNT III**  
**(Microsoft's Infringement of U.S. Patent No. 7,454,364)**

29. AlmondNet realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 20.

30. Microsoft has been and is directly infringing, actively inducing others to infringe, and/or contributing to the infringement of claims 1-2, 6-11, 14-15, and 17-18 of the '364 patent in this District and elsewhere by marketing, selling, offering to sell, providing, instructing, supplying, operating, licensing and/or supporting the Accused Systems and Services.

31. On information and belief, Microsoft's infringement of the '364 patent was, and continues to be, willful.

32. AlmondNet has been damaged by Microsoft's infringement of the '364 patent and will suffer irreparable injury unless the infringement is enjoined by this court.

**COUNT IV**  
**(Microsoft's Infringement of U.S. Patent No. 7,822,637)**

33. AlmondNet realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 20.

34. Microsoft has been and is directly infringing, actively inducing others to infringe, and/or contributing to the infringement of claims 1-2, 5, 9, and 12-13 of the '637 patent in this District and elsewhere by marketing, selling, offering to sell, providing, instructing, supplying,

operating, licensing and/or supporting the Accused Systems and Services.

35. On information and belief, Microsoft's infringement of the '637 patent was, and continues to be, willful.

36. AlmondNet has been damaged by Microsoft's infringement of the '637 patent and will suffer irreparable injury unless the infringement is enjoined by this court.

#### **JURY DEMAND**

37. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, AlmondNet hereby respectfully requests a jury trial on all issues and claims so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, AlmondNet prays for judgment as follows:

- A. Enter judgment that Microsoft has infringed, contributorily infringed and/or actively induced others to infringe the AlmondNet patents-in-suit;
- B. Enter judgment that Microsoft's infringement of the AlmondNet patents-in-suit is willful;
- C. Enter orders preliminarily and permanently enjoining Microsoft, its officers, directors, servants, managers, employees, agents, successors and assignees, and all persons in active concert or participation with any of them, from infringing, contributorily infringing and/or actively inducing others to infringe the AlmondNet patents-in-suit;
- D. Award AlmondNet all damages sufficient to compensate it for Microsoft's infringement of the AlmondNet patents-in-suit, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;
- E. Award increased damages, pursuant to 35 U.S.C. § 284, in an amount not less than three times the amount of actual damages awarded to AlmondNet, by reason

of Microsoft's willful infringement of the AlmondNet patents-in-suit;

- F. Declare this case exceptional under 35 U.S.C. § 285 and award AlmondNet its reasonable attorneys' fees, expenses and costs incurred in this action; and
- G. Award AlmondNet such other and further relief as this Court deems just and proper.

Dated: January 3, 2011

/s/ David K. Callahan

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of January, 2011, a copy of the foregoing was served upon counsel of record via ECF filing notice.

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/s/ David K. Callahan